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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181448
Party	Plaintiff Jeff Brown
Correspondence Address	Courtney Bru Doerner Saunders Daniel & Anderson 320 S. Boston Avenue, Suite 500 Tulsa, OK 74103 UNITED STATES rblue@dsda.com, cbru@dsda.com
Submission	Other Motions/Papers
Filer's Name	Rachel Blue
Filer's e-mail	rachel.blue@mcafeetaft.com
Signature	/RachelBlue/
Date	08/27/2009
Attachments	Motion to Reopen 082709.pdf (16 pages)(864096 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P. O. Box 1451
Alexandria, VA 22313-1451

Mailed: August 27, 2009

Opposition No. 91181448

Jeff Brown

v.

Patriot Guard Riders, Inc.

**Applicant's Motion to Reopen Time to Serve Amended Notice of Opposition due to Excusable Neglect and
Brief in Response to Applicant's Motions to Dismiss and to Strike**

On August 19, 2009 applicant filed motions to dismiss the opposition and to strike the amended pleading filed by opposer on August 4, 2009. Following is the Opposer's reply to the Applicant's Motion and Opposer's motion to reopen the time to serve the Amended Notice of Opposition.

Opposer's Response to Applicant's Motion to Strike the Amended Notice of Opposition and to Dismiss the Opposition

Opposer admits and takes responsibility for committing an administrative error in the service of the pleading. The amended answer was filed on August 4, 2009, within the 15-day limit set in the TTAB's order denying the parties' cross motions for summary judgment. However, the certificate of service did not attach correctly to the electronic filing. The following day, still within the 15 day period, Applicant's counsel realized that the service certificate had not properly attached, and directed Diane Goswick, her administrative assistant, to attach the certificate of service and mail it to opposing counsel (See the e-mail attached hereto as Exhibit A.) However, also on August 5, 2009, Ms. Goswick's child was hospitalized. Ms. Goswick did not complete the task until the following day, one day out of time. (See affidavit of Diane Goswick, Exhibit B) and pleading with certificate of service as mailed August 6, 2009.

The opposer's counsel in no way seeks to avoid responsibility for the administrative oversight. It is true that the certificate of service is dated one day outside the time allotted for filing and serving the amended pleading in the board's decision to deny the parties' cross motions for summary judgment.

That deadline for an amended pleading was administrative in nature, and was at the discretion of the board. Opposer's counsel made a good faith effort to comply therewith, but erred in the attachment of the certificate of service. Thus, granting of the applicant's motions to strike or dismiss the opposition would result in an unreasonably harsh result for the opposer. Discovery in this matter has been completed, at considerable expense. Outright dismissal or a striking of the pleading on such a technicality would be a disproportionate response, and is not supported by case law or equitable principles.

According to TBMP 506.01, "Motions to strike are not favored, and matter will not be stricken unless it clearly has no bearing upon the issues in the case. The primary purpose of pleadings, under the Federal Rules of Civil Procedure, is to give fair notice of the claims or defenses asserted. Thus, the Board, in its discretion, may decline to strike even objectionable pleadings where their inclusion will not prejudice the adverse party, but rather will provide fuller notice of the basis for a claim or defense."

A delay of 24 hours in a certificate of service (actual notice notwithstanding) would not result in any prejudice to the Applicant here. The purpose of requiring the amended pleading in the first place was to give the Applicant fuller notice of the basis of Opposer's claims. Had opposer sought an extension of time to file the amended pleading from the board or with the consent of the Applicant, it would likely have been granted, either as a return of the courtesy thus far shown between counsel in this matter or by order of the TTAB on a showing of good cause (See TMBP 502.02(a)). However, no such extension was requested, because Opposer did not believe one was needed. Applicant makes this point regarding extensions not to excuse the error, but rather to underscore the fact that extensions, while not guaranteed, are commonplace and routinely granted. A twenty four hour delay in a certificate of service (not even actual service, but rather the certification thereof) is, in comparison to an extension, a de minimus inconvenience at best.

Applicant's counsel's own briefings make it clear that the applicant was not prejudiced by the delayed certificate of service, and that Applicant's counsel not only knew that the amended pleading had been filed but in fact has reviewed the pleading online. To request that a pleading be stricken and a matter dismissed for such a technical violation of the rules would be patently unfair to the parties. That the certificate of service was not provided until it was attached to the copy of the pleading mailed to opposing counsel on August 6, one day out of time, is de minimus. *Carano v. Vina Concha Y Toro S.A.*, 67 USPQ 2D 1149; (TTAB 2003) (Denying Applicant's request to refuse consideration and stating Opposer's one day late response to applicant's motion to dismiss was a "de minimis amount of time.") *Intel Corp. v. Felicia Wheeler-Sweet*, Opp. No. 91096517 (May 18, 1999) (Denying Opposer's motion to strike Applicant's brief as untimely and stating that Applicant's filing of brief one day late "is clearly de minimus in nature, and there is no prejudice to Opposer.")

Moreover, striking the pleading or dismissing this matter, would serve little purpose except to waste the time and resources of the board and the parties to date, given that there are alternative avenues available to seek a denial of registration and injunction against the applicant's use. Although Opposer's counsel regrets the error and made good faith efforts to remedy as soon as it was discovered, the relief requested by the Applicant is out of proportion to the nature of the error.

Applicant also alleges that:

1. Brown has not alleged how or where the first use of the mark occurred. Brown's application contains his dates of first use, the amended pleading sets forth those dates of first use.
2. Brown provides no assertions of how or why first use was by Brown instead of PGR. It is not incumbent upon Brown to structure his pleading so as to provide PGR with a defense. Brown alleges first use of the mark on association services as of a particular date and further alleges that any use of the mark by the PGR took place as a result of a license. Applicant may rebut that allegation either by establishing an earlier date of use by PGR, but again Brown is not required to do more than give notice of his priority of use.

3. Brown has failed to assert how an individual could provide association services. However, there is no prohibition against an individual rendering association services. A brief survey of registered marks reveals hundreds of registrations for association services owned by individuals.
4. Brown alleges the PGR operated its association by means of a license (a point covered at length during discovery) but has not alleged the specifics of that license. The allegation of a license from Brown to the PGR is sufficient under notice pleading requirements.
5. Brown provides no assertions as to when/where or how the PGR became aware of Brown's ownership of the mark. Brown has alleged that the PGR's use of the mark was through a license, and has alleged priority of the mark. Again, notice pleading is sufficient, but logically, if Brown alleges that he used the mark first and further that he licensed it to PGR, PGR would have to know of Brown's use of the mark.
6. Brown provides no assertions as to how/when/where PGR became aware that Brown's use of the mark was done on his own behalf instead of by the corporation. Again, notice pleading is sufficient. Brown is not required to frame the complaint in such a manner as to suggest or prepare defenses for the PGR.

Section 309.03(a)(2) of the TMBP provides that "A notice of opposition must include (1) a short and plain statement of the reason(s) why opposer believes it would be damaged by the registration of the opposed mark (i.e., opposer's standing to maintain the proceeding (see TBMP §§ 303.03 and 309.03(b)), and (2) a short and plain statement of one or more grounds for opposition. The amended pleading is such a short and plain statement.

Evidentiary matters, such as the date/manner and method that the PGR became aware of Brown's prior use of the mark, or his use in his own capacity rather than on behalf of a corporation are matters for proof, not for pleading. In inter partes proceedings before the Board, as in civil cases before the United States district courts, all pleadings are so construed as to do substantial justice. As required, Brown has plead statutory grounds for the opposition.

In Section 309.03(c) (A), the TMBP specifically provides, with respect to likelihood of confusion and priority that in order to properly assert priority, a plaintiff must allege facts showing proprietary rights in its pleaded mark that are prior to defendant's rights in the challenged mark. The manual goes on to indicate that such rights may be shown by, for example, ownership of an application with a filing date (or a registration with an underlying application filing date) prior to any date of first use on which defendant can rely; prior trademark or service mark use; or prior use analogous to trademark or service mark use. Here, Brown has set forth his application with dates of use, and has alleged prior trademark and service mark use and thus meets the requirements for pleading.

PGR further alleges that Brown has “improperly broadened” the scope of its fraud claim to include matters relating to the specimens filed during the prosecution of 77/040379 and 77/383586. Moreover, the TTAB placed no restrictions on the nature of the amended pleading, and the Applicant’s failure to use the marks at all (despite allegations to the contrary) is relevant to the issue of likelihood of confusion and priority, which were a part of the original notice of opposition.

It should also be noted that in Applicant’s amended answer filed February 5, 2008, applicant specifically requested that the TTAB amend the opposition proceeding to include both applications filed by the applicant so as to avoid multiple oppositions.

The remainder of the allegations are not substantive. Applicant cites the requirement under 37 CFR Section 2.126(a)(1) that a paper submission (which this was not) must be printed in 11 point type and double spaced. While such a complaint is hardly worthy of response, if, as claimed, Applicant’s counsel has “never received” the pleading by mail, on what grounds is such a complaint based?

As for the remaining complaints regarding the form of the amended notice, the Applicant’s counsel, having dealt with Opposer’s counsel for nearly a year, is well aware of the capacity of the signing individual, and that Brown’s entity type is set forth in his application, referenced in the amended notice.

Motion to Reopen Time to File and Serve Amended Notice of Opposition

Section 502.02 (b) of the T.M.B.P. provides for the Board to grant leave to file and serve the amended pleading out of time upon a showing of excusable neglect. The Opposer's service of the pleading 16 days after the order to do so, rather than 15, was the result of excusable neglect. See Fed. R. Civ. P. 6(b).

The analysis to be used in determining whether a party has shown excusable neglect was set forth by the Supreme Court in *Pioneer Investment Services Company v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993), and was adopted by the Board in *Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997), and hold that a determination of excusable neglect determination must take into account all relevant circumstances surrounding the party's omission or delay, including:

- (1) the danger of prejudice to the nonmovant
- (2) the length of the delay and its potential impact on judicial proceedings
- (3) the reason for the delay, including whether it was within the reasonable control of the movant,
- and
- (4) whether the movant acted in good faith.

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With regard to the first factor in the analysis, PGR has alleged no prejudice to its ability to litigate the case. There has been no allegation that the single day's delay in receiving the certificate of service of the amended pleading has resulted in a loss or unavailability of evidence or witnesses which otherwise have been available to PGR, Inc. Moreover, at this stage of the proceedings, where discovery has been completed, it is unlikely that a delay of one day would have any impact at all. It is well settled that the "prejudice to the nonmovant" must be more than the mere inconvenience and delay caused by the movant's previous failure to take timely action, and more than the nonmovant's loss of any tactical advantage which it otherwise would enjoy as a result of the 24 hour delay. See *Pioneer Investment Services Company v. Brunswick Associates Ltd. Partnership*, *supra*.

The second factor also weighs in favor of excusable neglect. The actual filing of the amended pleading, even without the certificate of service, Rule 113.02 notwithstanding, was timely and in compliance with the Board's order giving the Opposer 15 days for the filing of the amended pleading. Opposer's counsel realized that the certificate had not attached and directed, the following day and still

within the time period, that applicant be served via first class mail. There was no de facto delay in the filing and the delay in the certification service was less than 24 hours.

Turning to the reason for the delay, the evidence shows that the filing was timely, as was the attempt to correct the service defect. The unexpected departure of a staff member due to a child's hospitalization was not within the control of the Opposer's counsel, who fully expected the return of Ms. Goswick, her administrative assistant, and had a reasonable expectation that directions would be carried out, as is the custom and practice of Ms. Goswick. Opposer's counsel in no way seeks to blame the administrative assistant for this error. It is Ms. Goswick's custom and practice to attend to requests immediately. She believed she would return to the office in time to perform the request and counsel relied on her representation that she would do so. Had either Ms. Goswick or Ms. Blue realized that she would not be in a position to return, alternative arrangements would have been made.

The final factor is that of the Opposer's good faith. In this case, of course, it is the good faith of counsel in question. The fact that the filing itself was made prior to the expiration of the allotted period, that there exists evidence in the form of the e-mail directing the certificate of service be prepared and sent (still within the time) and the cure of the defect one day late should indicate that Opposer's counsel acted in good faith to comply with the deadline for filing and serving the amended complaint as directed by the TTAB and to minimize any delay or inconvenience to opposing counsel or the other party.

Although it is clear from the Applicant's motions to strike and dismiss that Applicant's counsel is in receipt of and had reviewed the Opposer's amended notice of opposition, Opposer hereby submits a copy of the Amended Notice of Opposition with an attached certificate of service (attached hereto as Exhibit C) and moves that the TTAB accept the amended notice and deem the certificate of service valid and that the TTAB calculate the date for Applicant's answer as it sees fit to minimize any prejudice to the Applicant. Opposer has no objection to the calculation of the answer date from the date in the attached amended pleading and certificate of service, even though such a calculation gives the Applicant a de facto extension of time to answer, given that Applicant has had notice of the pleading since August 4, 2009.

Opposer requests that the Applicant's alternative motions to dismiss the opposition or strike the amended pleadings be denied, and further that the time be reopened to serve the amended pleading and set forth a date certain for Applicant's time to answer the amended complaint.

Respectfully submitted,

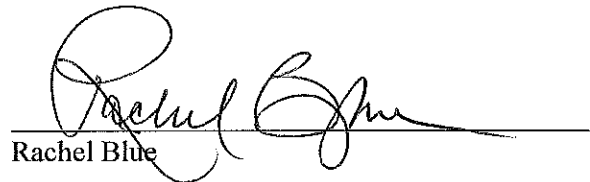


Rachel Blue
McAfee & Taft
500 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103
(918)587-0000
(918)599-9317 *facsimile*
Attorneys for Jeff Brown

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of August, 2009, I mailed a true and correct copy of the foregoing document, postage prepaid, to:

Dave Marr
Trexler, Bushnell, Giangiorgi, Blackston
105 West Adams Street, 36th Floor
Chicago, Illinois 60603



Rachel Blue

From: Blue, Rachel
Sent: Wednesday, August 05, 2009 4:26 PM
To: Byrom, Diane
Subject: Jeff Brown Patriot Guard Riders Opposition.

Would you please go ahead and send a copy of the Amended Notice of Opposition (in the Jeff Brown worksite) to

Dave Marr at
Trexler, Bushnell, Giangiorgi, Blackston
36th Floor 105 West Adams St.
Chicago, IL 60603
UNITED STATES

With a certificate of service?

Also, please docket the following dates (we are the Opposer, or Plaintiff):

Trial dates are reset as follows:

Plaintiff's 30-day Trial Period Ends 9/20/09

Defendant's Pretrial Disclosures 10/5/09

Defendant's 30-day Trial Period Ends 11/19/09

4 The parties should note that evidence submitted in connection with the motions for summary judgment is of record only for consideration of the motions. To be considered at final hearing, any such evidence must be properly introduced in evidence during the appropriate trial period. See *Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993).

5 The Board need not reach the fraud claim if opposer prevails on its likelihood of confusion claim. Cf., *Am. Paging Inc. v. Am. Mobilphone Inc.*, 13 USPQ2d 2036, 2039-40 (TTAB 1989), *aff'd* mem., 17 USPQ2d 1726 (Fed. Cir. 1990) (determining not to reach the merits of the abandonment claim). On the other hand, if the Board finds that there is no likelihood of confusion, opposer's fraud claim must fail as well, since absent a likelihood of confusion, applicant's declaration is not false.

6 Opposer served its pretrial disclosures on January 9, 2009.
Opposition No. 91181448

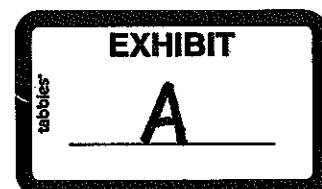
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Plaintiff's Rebuttal Disclosures 12/4/09

Plaintiff's 15-day Rebuttal Period Ends 1/3/10

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.



Opposition No. 91181448

Jeff Brown
v.
Patriot Guard Riders, Inc.

AFFIDAVIT OF DIANE GOSWICK

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

1. I am a Legal Assistant to Rachel Blue at McAfee & Taft, 100 West Fifth Street, Suite 500, Tulsa, Oklahoma 74103.

2. On August 5, 2009, Rachel Blue sent me an e-mail requesting me to send a copy of the Amended Notice of Opposition to Dave Marr at Trexler, Bushnell, Giangiorgi & Blackston, 36th Floor, 105 West Adams Street, Chicago, Illinois 60603, with a Certificate of Service.

3. All requests of this nature are handled in a timely manner. However, on the morning of August 5, 2009, my nine year old son was taken to the doctor's office after being ill for four days. The doctor requested he be admitted to the hospital for dehydration. I left the office at approximately 1:30 p.m. to meet him at the hospital and had every intention of returning to the office before 5:00 p.m. My son was not released from the hospital until after 5:00 p.m. and I did not come back to the office on August 5, 2009. Therefore, the Amended Notice of Opposition was not mailed.

4. As soon as I came in the office on August 6, 2009, I realized I had not mailed the document and proceeded to prepare the Certificate of Service for Rachel Blue's signature and mailing. I mailed the pleading with the Certificate of Service attached on August 6, 2009, via first class mail. A copy of the pleading and Certificate of Service is attached hereto.

5. It is the practice at our firm to log all postage for billable clients on a postage log sheet. Attached hereto is the postage log sheet for August 6, 2009, noting the charges billed to our client, Jeff Brown, for mailing the referenced pleading and Certificate of Service to Dave Marr at Trexler, Bushnell, Giangiorgi & Blackston, 36th Floor, 105 West Adams Street, Chicago, Illinois 60603.

FURTHER AFFIANT SAYETH NOT.

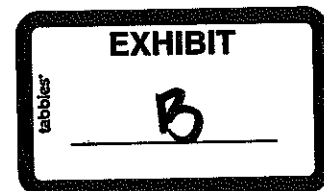
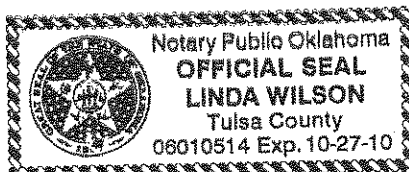
Diane Goswick
Diane Goswick

Subscribed and sworn to before me this 27 day of August, 2009.

Linda Wilson
Notary Public, State of Oklahoma

My Commission Expires:

10-27-10



CLIENT #	MATTER #	NAME	TYPE	AMOUNT	LAWYER #	DATE	REFERENCE	DETAILS
00001	00001			.61	X3	8 6 09		Postage
70075	00001			.78		8 6 09		"
01028	00001	JEFF BROWN		1.22	PB	8 6 09		"
00623	00012			6.32		8 6 09		"
71935	00001			1.44	X40	8 7 09		
71520	00002			1.44		8 7 09		
00001	00001			1.44		8 7 09		
		C Plumb		1.44	X2	8 7 09		1200.00
		R Hix		1.44		8 7 09		"
76445	00002			1.44		8 7 09		post
00626	00002			1.44		8 7 09		"
00724	00001			1.41		8 7 09		"
71570	00004			1.90		8 7 09		
TOTAL								

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Application Serial No. 77040379 [
Published in the *Official Gazette* on October 30, 2007**

Jeff Brown

Opposition No. 91181448

Opposer,

- against -

Patriot Guard Riders, Inc.,

Applicant.

July 31, 2009

AMENDED NOTICE OF OPPOSITION

Jeff Brown, ("Opposer") opposes the grant of the application of Patriot Guard Riders, Inc. ("Applicant") to register the mark "PATRIOT GUARD RIDERS RIDING WITH RESPECT and design" for "Organizing and conducting support groups in the field of combat veterans and their families" in International Class 45.

COUNT ONE

1. Since November 9, 2005, Opposer has continuously used the mark PATRIOT GUARD RIDERS in interstate commerce, for a wide variety of goods and Services, and Opposer has been actively expanding its use of the mark. Opposer has been using its PATRIOT GUARD RIDER and design in connection with a variety of goods and services, namely Metal license plates, Ornamental pins, Cloth banners; Fabric flags, Hats; Short-sleeved or long-sleeved t-shirts; Embroidered patches for clothing and association services, namely, promoting the interests of families of deceased military members and families of deceased veterans as specified below:

2. Opposer is the owner of the following federal trademark application: (a) No. 77041061 filed on the Principal Register on November 9, 2006, for the trademark PATRIOT GUARD RIDER for:

International Class: 006

Metal license plates

First Use Date: 2005-12-09

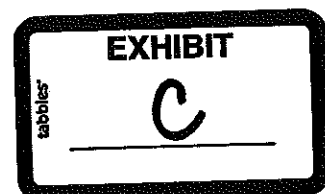
First Use in Commerce Date: 2005-12-09

International Class: 014

Ornamental pins

First Use Date: 2005-12-14

First Use in Commerce Date: 2005-12-14



International Class: 024
Cloth banners; Fabric flags
First Use Date: 2005-11-29
First Use in Commerce Date: 2005-11-29

International Class: 025
Hats; Short-sleeved or long-sleeved t-shirts
First Use Date: 2005-12-08
First Use in Commerce Date: 2005-12-08

International Class: 026
Embroidered patches for clothing
First Use Date: 2005-12-23
First Use in Commerce Date: 2005-12-23

International Class: 035
Association services, namely, promoting the interests of families of deceased military members and families of deceased veterans
First Use Date: 2005-10-27
First Use in Commerce Date: 2005-11-09

3. Opposer and its licensees have used the PATRIOT GUARD RIDER trademarks in connection with the sale and provision of a variety of goods and Services in United States commerce since 2005.
4. As a result of the widespread use in interstate commerce by the Opposer and its licensees of the aforesaid trademarks in connection with a wide variety of goods and services, the marks have acquired extensive goodwill, have developed a high degree of distinctiveness and are well known and recognized as identifying high quality goods and services which have their origin with or have been authorized by the Opposer.
5. Applicant's mark PATRIOT GUARD RIDERS RIDING WITH RESPECT is essentially identical to Opposer's trademarks in sound, appearance and commercial impression, and in fact specimens submitted on August 23, 2007 in response to the Examiner's requirement are in fact photographs of Opposer's goods, as evidenced by the use of PATRIOT GUARD RIDER in the singular on the pins, rather than PATRIOT GUARD RIDERS as the mark appears in the drawing for Applicant's mark.
6. Applicant operated its association services by means of a license from Opposer and was aware of Opposer's use of the virtually identical mark in

connection with association services and a variety of goods at the time Application No. 77040379 for the mark PATRIOT GUARD RIDERS RIDING WITH RESPECT was filed, despite Applicant's declaration that declares that "he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true."

7. Applicant's use of the mark PATRIOT GUARD RIDERS were by way of a license.

8. Applicant's filings of 77/040379 and 77383586 were not authorized by the Opposer.

9. Applicant's services as identified in its PATRIOT GUARD RIDERS RIDING WITH RESPECT are related to the goods and Services sold and provided in connection with Opposer's PATRIOT GUARD RIDER mark and/or travel and/or be promoted through the same channels of trade for sale to, and use by, the same class of purchasers.

10. Applicant's later filed application, 77383586, for the mark PATRIOT GUARD RIDERS, which Applicant earlier sought to be considered in this proceeding and which application is now suspended pending the outcome of this opposition, identifies goods identical or closely related to those in Opposer's application 77041061.

11. Applicant's use of the mark PATRIOT GUARD RIDERS in connection with its proposed goods and Services is likely to cause confusion, mistake or deception as to the source of origin of Applicant's goods and Services in that the public, the trade and others are likely to believe that Applicant's goods and Services are: (a) the same goods and Services as Opposer's; or (b) provided by, sponsored by, approved by, licensed by, affiliated with or in some other way legitimately connected to Opposer and/or its goods, Services or licensed products.

COUNT TWO

12. Opposer repeats and realleges the allegations set forth in paragraphs 1 through 9 as though set forth herein.

13. Applicant's claims of ownership of the mark in Application No. 77/040379 were fraudulent, in that Applicant was aware of Opposer's use of the virtually identical mark and was aware of Opposer's claim of ownership.

14. Applicant's claims of use in Application No. 77383586 on:

Ornamental pins; commemorative coins. FIRST USE: 20051214. FIRST USE IN COMMERCE: 20051214

Cloth banners; fabric flags. FIRST USE: 20051129. FIRST USE IN COMMERCE: 20051129

Hats; short-sleeved and long-sleeved t-shirts; sweatshirts; do rags. FIRST USE: 20051208. FIRST USE IN COMMERCE: 20051208

Embroidered patches for clothing; armbands. FIRST USE: 20051223. FIRST USE IN COMMERCE: 20051223

Are fraudulent in that the Applicant had not used the mark on any of those goods as claimed in the application.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and Applicant's application to register the marks PATRIOT GUARD RIDERS and PATRIOT GUARD RIDERS RIDING WITH RESPECT be denied in all respects.

Dated: August 27th, 2009

Respectfully submitted,

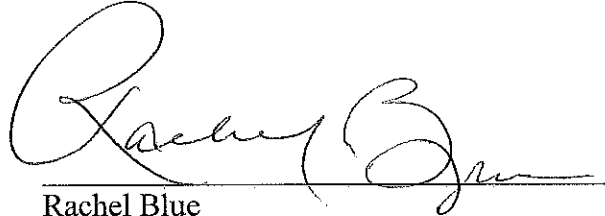


Rachel Blue

CERTIFICATE OF MAILING

I hereby certify that on the 27th day of August, 2009, I mailed a true and correct copy of the foregoing document, postage prepaid, to:

Dave Marr
Trexler, Bushnell, Giangiorgi, Blackston
36th Floor 105 West Adams St.
Chicago, IL 60603

A handwritten signature in black ink, appearing to read "Rachel Blue", written over a horizontal line.

Rachel Blue
McAFEE & Taft
100 West Fifth Street
500 ONEOK Plaza
Tulsa, Oklahoma 74103
(918)587-0000
(918)599-9317 *facsimile*
Rachel.Blue@mcafeetaft.com